

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.20 OF 2005
IN
EXECUTION APPLICATION (L)NO.4 OF 2005
IN
WRIT PETITION NO.2569 OF 1984

John Percival Aranha. ..Petitioner.

V/s.

Dilwara co-op.Hsg.Society & ors. ..Respondents.

Mr.Chetan Kapadia i/b Manilal Kher Ambalal for
applicant/petitioner.

Mr.L.C.Joshi for Respondent No.3.

Mr.Prashant Beri i/b Beri & Co. for respondent
No.1.

CORAM: A.M.KHANWILKAR, J

DATE : AUGUST 3, 2005.

P.C. :

1. Heard counsel for the petitioners and for respondent No.1 to 6. None appears for the respondent No.7 as well as respondent No.8 though served.

2. Briefly stated, the petitioner alongwith respondent No.3 and the predecessor of respondent No.4 to 7 had separately filed Writ Petition in this court. The said Writ Petitions were allowed with direction to respondent No.1 to construct three flats

for the respective Petitioners, so as to provide them residential accommodation as members of the respondent No.1 society. The said decision was carried in three separate appeals by the respondent No.2 State of Maharashtra, which appeals however, came to be dismissed, confirming the direction issued by the Division Bench of this court to the Respondent No.1 society. The apex court has decided the appeals against the respondent No.2 on 13th October, 1999; and as no steps were taken by respondent No.1 society to comply with the directions given by this Court which have been confirmed by the Apex court, the petitioner as well as respondent No.3 moved the Division Bench for appropriate direction. The Division Bench in turn, granted liberty to the parties to take recourse to the remedy of execution, if so advised. Accordingly, two chamber summonses are filed in this court by petitioner John Percival Aranha and the other is filed by Dattatraya Mahadeo Aney respectively. The purpose of filing the chamber summonses is only to seek enforcement of the directions against the respondent No.1 society.

3. Respondent No.1 society on the other hand contends that because of pending dispute between the heirs of (Mr.T.K.Tope) the original

petitioner/member, namely the respondent No.4 to 7 herein, no construction activity could be undertaken as the society is not in a position to undertake the liability of making requisite deposit with Municipal authority and also incur construction cost of the proposed structure. The petitioner and respondent No.3 on the other hand submit that they are willing to contribute all the common expenses which are needed for the construction of the building, so that atleast their flats can be constructed and allotted to them to which they are entitled to. This can be done irrespective of the pending dispute between the heirs of original member respondents No.4 to 7 herein.

4. The respondent No.4 to 7 who are the heirs and legal representative of the original member T.K.Tope were duly served. However, this court directed the petitioner to serve them afresh. Pursuant to that directions, the said respondents have been duly served again. In response to the fresh notice issued to them Mr.L.C.Joshi appears for respondent No.4 to 6. The learned counsel for the respondent No.4 to 6 submits that there is still dispute between the heirs of original members T.K.Tope(since deceased) and unless the same is

resolved, it will not be possible to make contribution to respondent No.1 society for construction of flat to be allocated to them. However, for the nature of order that I propose to pass, no prejudice will be caused to respondent No.4 to 7.

5. Counsel for the respondent No.1 on the other hand submits that respondent No.1 society has already obtained necessary permission from the corporation. It is brought to my notice that IOD has been issued by the corporation long back. Counsel for the respondent No.1 contends that the respondent No.1 is willing to comply with all other formalities as may be required before commencement of the construction of the proposed building. In other words, respondent No.1 will undertake construction of the proposed building only after necessary approvals are received from all the authorities concerned and the proposed building will be constructed strictly as per the sanctioned plans. The apprehension expressed on behalf of the respondent No.1 is that, arrangement suggested by the petitioner and respondent No.3 before this court is to be accepted, even then the nature of structure to be erected will have to be clarified. Besides, liability of the parties to

contribute for the construction costs and other formalities as may be required from time to time should be clearly provided for.

5. After considering submissions of the counsel appearing for the respective parties and going through the pleadings, I have no hesitation in allowing the chamber summons in terms of prayer clause (b) and (c). This is so because the petitioner and respondent No.3 are willing to proportionately contribute the amount towards common expenses to be incurred by respondent No.1 society towards deposits to be made with the municipal authority as well as to undertake construction of the proposed building as per the sanctioned plan which will consist of common areas and provision for the third flat. However, that contribution will be on the understanding that as and when issue between the heirs of deceased Shri T.K.Tope is resolved and contribution received in respect of their flat from them, the contribution made by the petitioner and respondent No.3 for and on behalf of respondent No.4 to 7 being heirs of Shri T.K.Tope, will have to be reimbursed proportionately. This arrangement in my opinion, as suggested by the petitioner and respondent No.3 is reasonable and practical solution.

In the fact situation of the present case such arrangement will not cause any prejudice to the respondent No.1 society or for that matter to respondent No.4 to 7 who are the heirs and legal representative of the original member Shri T.K.Tope (since deceased). This arrangement would also facilitate undertaking construction of proposed building by the respondent No.1 forthwith, so as to provide relief to petitioner and respondent No.3 who are inclined to make necessary contribution in that behalf.

6. Apprehension expressed on behalf of the respondent No.1 society, in my opinion, regarding the nature of structure to be erected is also ill-advised. In any case, the arrangement suggested by petitioner and respondent No.3 that the columns required to erect the proposed building so as to make provision for the third flat to be allotted to the heirs of Shri Tope at the later stage can be completed so as to facilitate installation of water tank on the top of the proposed building leaving the third floor construction to be finalised by erecting walls etc. only after contribution is received from the heirs of original member Shri T.K.Tope(since deceased). In the mean time, as mentioned earlier,

petitioner as well as respondent No.3 is willing to contribute for the common expenses to be incurred for erection of columns portion on the third floor, which contribution will have to be proportionately reimbursed to them after deposit is made by the heirs of the deceased Mr.T.K.Tope.

7. In so far as the commitment to be taken from the petitioner and respondent No.3 for making regular payment as per the progress of the construction is concerned, that is inherent in the nature of relief claimed on their behalf in terms of prayer clause (b). It is therefore, not necessary to make any further observation except to mention that in fact it is petitioner and respondent No.3 who are eager to get possession of their respective flats and for which purpose, they will have to make necessary contribution, as and when demanded by the respondent No.1 society.

8. Accordingly, this chamber summons should succeed in terms of prayer clause (b) and (c). It is not necessary for the present to consider relief in terms of prayer clause (d) and (e). Prayer clause (e) is only in respect of some possible objection to be taken by the heirs of deceased member T.K.Tope.

As and when such occasion arises, the same can be considered by the appropriate court. In other words, those questions are left open to be decided at appropriate stage.

9. Accordingly, this chamber summons is made absolute in terms of prayer clause (b) and (c). Same is disposed of in the above terms.